IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14460 of 2004

with

SPECIAL CIVIL APPLICATION No 14813 of 2004

with

SPECIAL CIVIL APPLICATION No 14819 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI
and
HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BK SHARMA

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 14460 of 2004

MR SURENDRA K KAPUR, SR. ADVOCATE with MR RAVI KAPUR, BARRISTER-AT-LAW with MR NIRAV C THAKKAR for Petitioners No. 1-2

MR JITENDRA MALKAN, STANDING COUNSEL and MS SEJAL K

MANDAVIA for Respondent No.1 - Union of India
MR SN SHELAT, ADVOCATE GENERAL with MR ASHISH DESAI, AGP for Respondents No. 2-3
MR SN SHELAT, ADVOCATE GENERAL with MR KH BAXI for Respondent No. 4
MR SB VAKIL, SR. ADVOCATE with MR RAVINDRA SHAH and MR ARUNKUMAR VARMA for Respondent No. 5

2. Special Civil Application No. 14813 of 2004
MR AK CLERK for Petitioner
MR JITENDRA MALKAN, STANDING COUNSEL for Respondent No.1 - Union of India
MR SN SHELAT, ADVOCATE GENERAL with MR ASHISH DESAI, AGP for Respondents No.2 & 3
MR SN SHELAT, ADVOCATE GENERAL with MR KH BAXI for Respondent No.4 - GPCB
MR PM THAKKAR with MR RAVINDRA SHAH and MRS KANAN R SHAH and MR ARUNKUMAR VARMA for Respondent No.5

3. Special Civil Application No. 14819 of 2004
MR AMIT PANCHAL for Petitioner
MR SN SHELAT, ADVOCATE GENERAL with MR AHSISH DESAI, AGP for Respondents No.1 & 2
MR SN SHELAT, ADVOCATE GENERAL with MR KH BAXI for Respondent No.5
MR JITENDRA MALKAN, STANDING COUNSEL for Respondents No. 3,4 & 6
MR PM THAKKAR with MR RAVINDRA SHAH and MR ARUNKUMAR VARMA for Respondent No.7

CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI
and
HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 9/12/2004

C.A.V. JUDGEMENT

(Per : HON'BLE MR.JUSTICE K.A.PUJ)

Since common issues are involved in all these three Special Civil Applications and since the prayers made therein are almost same and similar, all the three Special Civil Applications are being disposed of by this common judgment and order.

2. At the joint request of the parties, all the three matters are finally heard at length at the admission stage and they are being finally disposed of.

3. All the three petitions are filed by way of Public Interest Litigations under Article 226 of the

Constitution of India. The first petition, being Special Civil Application No.14460 of 2004, is argued at length by all the learned counsels appearing for the respective parties. The learned counsel appearing for the petitioners in Special Civil Applications No.14813 and 14819 of 2004 are also permitted to make their submissions as interveners. The facts and submissions are mainly taken from that first petition.

4. The petitioner no.2 is claiming to be a NGO involved, inter alia, in the protection of environmental laws and other public related activities. Before filing the present petition, the petitioners had filed Special Civil Application No.8937 of 2004 before this court seeking direction against the authorities to take appropriate preventive steps and measures against the respondent no.5 i.e. M/s. Saw Pipes Limited for proceeding further with the construction activities of the respondent no.5's project comprising Blast Furnace and Ductile Iron/Cast Iron Pipe, Fitting, Casting Manufacturing plant and foundry near Mundra, Kutch without prior environmental clearance under the Environment (Protection) Act & Rules, 1986, and the Environment Impact Notification dated 27th January, 1994. Even the petitioners in Special Civil Application No.14813 of 2004 and 14819 of 2004 have also filed petitions being Special Civil Application No.10015 of 2004 and Special Civil Application No.8118 of 2004. All the three petitions were disposed of by this court on 9th September, 2004 permitting the petitioners to withdraw the same so as to make representation to the Central Government. Subsequent to the withdrawal of the said petitions, representations were made by the present petitioners of all the three petitions on or about 16th September, 2004 and the said representations were decided by the respondent no.1 on 21st October, 2004 stating that the objections raised by the present petitioners to the grant of environmental clearance to the respondent no.5 i.e. M/s. Saw Pipes Ltd. for establishment of mini Blast Furnace at village Samagogha in District Kutch of Gujarat have not been found justified, in the light of the provisions of Environment Impact Assessment Notification, 1994 and its subsequent amendments, and further stating that those environmental concerns which, after due consideration, have been found valid have been accounted for by stipulating specific conditions/safeguards in the environmental clearance letter. The environmental clearance letter was also dated 21st October, 2004 wherein it was observed that the proposal of the respondent no.5 was for environmental clearance for Mini Blast Furnace of capacity 2,50,000 TPA

for the manufacture of Ductile Iron Spun Pipes/Cast Iron Spun Pipes, LASW steel pipes, Spiral steel pipes, ERW steel pipes and Hot frame steel pipes including Ductile Iron Pipe Fittings and Ductile Iron Casting and further observing that the Ministry of Environment and Forests accorded environmental clearance to the said project under the provisions of EIA Notification dated 27th January, 1994 as amended subsequently, subject to strict compliance of specific and general conditions laid down therein.

5. It is this action of the respondent no.1 which is challenged in the present petitions.

6. The petitioners have, inter alia, prayed, in these petitions, for a declaration to the effect that the ex post facto approval dated 21st October, 2004 is null and void and that the respondent no.5's project comprising of Blast Furnace and the pipe manufacturing facilities is an integrated project and that the DI/CI spun pipe manufacturing facilities forming part of the respondent no.5's project is a foundry. The petitioners have also prayed for a writ in the nature of mandamus to the respondent no.5 to demolish/destroy the existing buildings/factory/plant at the project site and to restore the land to its original condition and also to demolish the blast furnace. The petitioners have also prayed for the appointment of an investigation team to examine the records and books of account of the respondent no.5 to ascertain the true cost of the project and also to appoint NEERI or any other appropriate agency to examine whether the project as designed is adequate for a seismic zone and to examine the two EIA reports as to whether all measures have been taken up for setting up the project and to file a report with this court within such time as may be directed. The petitioners have also ventilated their grievance against the respondent no.1 in not granting personal hearing while deciding their representation.

7. Before Mr. Surendra Kumar Kapur, the learned Senior advocate appearing for the petitioners, makes his submission, Mr. S.B. Vakil, the learned Senior advocate appearing for the respondent no.5 has raised preliminary objections against the maintainability of the petitions.

7.1 The first preliminary objection raised by Mr. Vakil was that the petitioners or either of them are/is not competent to sue or file a writ petition. He has submitted that the second petitioner, a Society registered under the Societies' Registration Act, 1866,

is not a person in the eye of law and is not competent to sue in its own name, as held by the Hon'ble Supreme Court in the case of TIBIA COLLEGE [AIR 1962 SC 458]. He has further submitted that the first petitioner has filed the writ petition in the capacity of Project Director of the second petitioner claiming authority to file the writ petition on behalf of the petitioner no.2 on the basis of the Resolution of the Governing Body of the petitioner no.2 passed at the meeting held on 15th July, 2004. This Resolution was not produced by the petitioners in any of the earlier proceedings and it was produced for the first time on 30th October, 2004 in the form of certificate of the Chairman of the petitioner no.2, whose affidavit has not been filed. Mr. Vakil has submitted that the alleged resolution is clearly an afterthought and concocted to provide competency of the writ petition.

7.2 Mr. Vakil has raised the second preliminary objection to the effect that the petition is not bonafide and genuine Public Interest Litigation but has been filed at the instance and behest of Electro Steel Casting Limited (ESCL). The petition is nothing but the result of business rivalry and has been sponsored by the said company. In support of this contention, Mr. Vakil has submitted that the said ESCL is the largest manufacturer of Cast Iron/Ductile Iron pipe in the country and has been able to create and maintain its monopoly in the said field by adopting all kinds of measures. He has further submitted that one Shri Shanti Swaroop, who has been joined as Consultant to the petitioner no.2 - NGO, was working as Advisor on retainership basis since the year 1997 with the said company and he operated from the office of the said company at New Delhi. Mr. Vakil has further submitted that the petitioner no.1 who has signed the present petition in his capacity as Project Director of the petitioner no.2 NGO has been shown as a resident of the same address as that of Shri Shanti Swaroop in the present petition. He has further submitted that the petitioner no.1 was Advisor/Consultant of the said company between the period November-December, 2003 to March-April, 2004 and was looking after marketing activities of the said company in the States of Madhya Pradesh and Chhattisgarh. Mr. Vakil has further submitted that to the knowledge and information of the Respondent No.5, the company which is allegedly sponsoring the present petition got moved one Public Interest Litigation against M/s. Lanco Kalahasthi Castings Limited of Chennai dealing in manufacturing of Ductile Iron/Cast Iron spun pipes and the said company has ultimately taken over this latter company.

7.3 Mr. Vakil has further raised an objection that against the impugned order, an alternative efficacious remedy is available and the petitioners could have filed an appeal before the National Environment Appellate Authority under Section 11 of the National Environment Appellate Authority Act, 1997. This Section permits any person, aggrieved by an order granting environmental clearance in the area in which industries, operations or processes/class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards, to prefer an appeal to the authority within 30 days from the date of such order.

7.4 Mr. Vakil has lastly raised the objection that there are several disputed questions of fact involved in the present petitions which cannot be entertained by this court, while exercising its extraordinary writ jurisdiction under Article 226 of the Constitution of India. On the basis of the aforesaid preliminary objections, Mr. Vakil has submitted that the petitions deserve to be dismissed at the threshold on the ground of non-maintainability.

8. While dealing with the preliminary objections, Mr. Kapur has submitted that the respondent no.5 has raised the question of validity and genuineness of the resolution merely with a view to delay the hearing of the present petition and to show that purported disputed questions of fact are involved in the petition. He has further submitted that the entire minute book of the petitioner no.2 Society was produced before this court to show that appropriate resolutions had been validly passed and the petitioner no.1 was appointed by the Governing Body to file the present petition. He has further submitted that even as per the submission of respondent no.5, the Society can, under Section 6 of the Societies' Registration Act, sue only in the name of a person appointed by the Governing Body of the Society. He has, therefore, submitted that it is very apparent from the resolutions itself as well as the minute book that the petitioner no.1 was appointed by the Governing Body of the petitioner no.2 for filing the present petition. Mr. Kapur has further submitted that there is no iota of evidence to show that the present petition was filed at the instance or behest of ESCL, as alleged by the respondent no.5. He has denied any relationship of office bearers or the Board of Trustees of the petitioner no.1 with the personnel of ESCL and even if there is such relationship, it has no bearing so far as the present petition is concerned. With regard to alternative remedy, Mr. Kapur has submitted that the authority is

not yet properly constituted as the post of Chairman is still vacant. The appellate authority has no power to grant interim relief and even otherwise, the alternative remedy is not a matter of compulsion. He has further submitted that despite there being an alternative remedy, the Court has ample power to entertain the petition where there is violation of fundamental right or there is violation of principles of natural justice or there is total lack of jurisdiction in the authority who passes such order which is under challenge. He has, therefore, submitted that there is no substance in any of the preliminary objections raised by the respondent no.5 and the petition may be entertained and decided on merits.

9. As far as the merits of the matter is concerned, Mr. Kapur has submitted that under EIA Notification dated 27th January, 1994, the entire procedure is laid down to be followed by any person who desires to undertake any new project in any part of India or the extension or modernisation of existing industry or project listed in Schedule-I, which includes an Environment Impact Assessment Report and Environment Management Plan and details of public hearing as contemplated in Schedule-IV of the Notification. Mr. Kapur has further submitted that the respondent no.5 was proposing a project consisting of a blast furnace, falling in Entry No. 13A of Schedule-I and Ductile Iron and Cast Iron Pipe Manufacturing Plant as well as manufacture of Ductile Iron and Cast Iron Fittings and Castings, which would fall within the Entry No.28 of Schedule-I being Foundries (Individual). Mr. Kapur has further submitted that the project was conceptualised as a single project even as per IEM filed by the respondent no.5 with the Ministry. It specifically mentions reference to manufacture of pig iron by use of blast furnace which would be required for Ductile Iron and Cast Iron Pipes/Fittings/Castings to be manufactured in the foundry. Despite the acknowledgment of IEM on 14th December, 2003, the respondent no.5 instead of applying to respondent no.2 for prior environmental clearance, made an application to GPCB (Gujarat Pollution Control Board) and sought NOC, inter alia, for the production of Ductile Spun Pipe, Cast Iron Spun Pipe, Ductile Iron Pipe Fitting, Ductile Iron Castings and this project was evidently comprising of a foundry and based on the NOC granted by the GPCB on 5th January, 2004, the respondent no.5 proceeded with the construction of the foundry. Mr. Kapur has further submitted that the NOC from GPCB does not amount to prior environmental clearance under the Act and no construction could have been commenced without obtaining such prior approval. He has further submitted

that immediately after obtaining NOC for part of the project and commencing the construction of that part of the project, the respondeat no.5 applied for obtaining NOC for blast furnace for manufacturing of pig iron. Though the respondent no.5 is intending to use an induction furnace for melting pig iron and steel as well as for holding superheating liquid metal, the respondent no.5 has not applied for the environmental clearance for using such induction furnace, being a foundry. He has submitted that as far as Entry No.32 of Schedule-I of Environment (Protection) Rules, 1986 is concerned, the standards for emission or discharge of environmental pollutants in respect of foundries were specified. He has further submitted that all establishments using any of the three furnaces namely, Cupola, arc or induction, for melting pig iron and steel as well as holding and superheating the metals are foundries per se. Mr. Kapur has further submitted that the Ductile Iron and Cast Iron pipe produced by centrifugal casting processes and other casting processes such as sand, mould etc. are typical foundry products and are finished as per the end use requirement. He has further submitted that the respondent no.5 uses induction furnace for melting pig iron and steel scrap which, in turn, is used in centrifugal casting process. The centrifugal casting process is one of the methods of casting and is a foundry process. Mr. Kapur has, therefore, submitted that the respondent no.5's project is a composite unit consisting of a blast furnace for the manufacture of pig iron in the foundry and the GPCB has no jurisdiction to give NOC to establish the Pipe Manufacturing Plant without prior environmental clearance. He has, therefore, submitted that no construction could have been commenced without prior environmental clearance and any construction, which was made, is required to be demolished.

10. Mr. Kapur has further submitted that the action of the respondent no.1 authorities to distinguish Ductile Iron and Cast Iron pipes manufactured by centrifugal casting and ductile iron castings and pipe fittings and to take the view that the first is not foundry while the second is foundry is ex-facie bad and contrary to the provisions of all Acts and Rules and contrary to all standard works on foundries and castings. He has further submitted that the respondent no.1 should not have granted clearance to respondent no.5 only in respect of blast furnace in view of the respondent no.5's indication by fax message dated 8th October, 2004 that it does not want to manufacture ductile iron fittings and castings. He has further submitted that by granting this clearance to blast furnace, the respondent no.1 authorities have

accommodated the respondent no.5 and to ensure that it can commence manufacturing activity forthwith after following due process.

11. Mr. Kapur has further relied on the dictionary meanings of words 'casting', 'Foundry' and 'individual'. The Oxford English dictionary defines the word 'casting' as an object made by casting especially of molten metal. The word 'Foundry' is defined as a workshop for or a business of casting metal and the word 'individual' is defined as 'single' particular, special, not general or 'having a distinct character'. On the basis of these definitions, he has submitted that pipe is an object made by casting metal and foundry is nothing but the business or workshop of casting metal. Entry No.28 of EIA Notification dated 27th January, 1994 contemplates that Foundries (Individual) means each and every foundry requires environmental clearance.

12. Mr. Kapur has further submitted that the view taken by the Ministry on the basis of the expert opinion of NML (National Metallurgical Laboratory) stating that a unit with induction furnace with centrifugally cast pipes cannot be taken as a foundry unit, is not the correct one. In support of his submissions, Mr. Kapur has relied on the opinion of Mr. S.P. Oudhia as well as on the relevant extract from Metallusters Reference and Guide compiled and edited by Ezra L. Kotzim. He has also relied on the opinion of Professor A.K. Chakrabarti stating that the projection of centrifugally cast iron ductile iron pipes, cast and ductile iron fittings and castings are all described as a foundry activity and the plants are called foundry works. He has, therefore, submitted that the respondent no.1 should have given due weightage to the expert's opinion produced before him by the petitioners alongwith their representation. Mr. Kapur has submitted that despite enough material being available with the respondent no.1, he has not correctly decided the jurisdictional fact. In this connection, he relied on the decision of the Hon'ble Supreme Court in the case of RAZA TEXTILES Ltd. vs. INCOME TAX OFFICER reported in (1973) 1 SCC 633, wherein the Hon'ble Supreme Court has held that "no authority, much less a quasi-judicial authority, can confer jurisdiction on itself by deciding a jurisdictional fact wrongly. The question whether the jurisdictional fact has been rightly decided or not is a question that is open for examination by the High Court in an application for a writ of certiorari." Mr. Kapur has further relied on the decision of the Hon'ble Supreme Court in the case of SHRISHT DHAWAN (SMT) vs. M/s SHAW BROTHERS reported in

(1992) 1 SCC 534, wherein at page 551, the Hon'ble Supreme Court has held that "a jurisdictional fact is one on existence or non-existence of which depends assumption or refusal to assume jurisdiction by a court, tribunal or an authority. In Black's Legal Dictionary, it is explained as a fact which must exist before a court can properly assume jurisdiction of a particular case. Mistake of fact in relation to jurisdiction is an error of jurisdictional fact. No statutory authority or tribunal can assume jurisdiction in respect of subject matter which the statute does not confer on it and if by deciding erroneously the fact on which jurisdiction depends, the court or tribunal exercises the jurisdiction then the order is vitiated." Mr. Kapur has further relied on the decision of the Hon'ble Supreme Court in the case of TATA CELLULAR vs. UNION OF INDIA reported in (1994) 6 SCC 651, wherein at page 680 in para 81, the Hon'ble Supreme Court has observed that "it is open to the court to review the decision-maker's evaluation of the facts. The court will intervene where the facts taken as a whole could not logically warrant the conclusion of the decision-maker. If the weight of facts pointing to one course of action is overwhelming, then a decision the other way, cannot be upheld."

13. Mr. Kapur has further submitted that since the construction work was carried out by the respondent no.5 without obtaining the environmental clearance, the respondent no.5 has violated the provisions of law and, therefore, the construction is required to be demolished. In this connection, he has relied on the decision of the Hon'ble Supreme Court in the case of INDIAN COUNCIL FOR ENVIRO-LEGAL ACTION vs. UNION OF INDIA AND OTHERS reported in (1996) 5 SCC 281, wherein at page 293 in para 26, it is observed that "It is with a view to protect and preserve the environment and save it for the future generations and to ensure good quality of life that Parliament enacted the anti-pollution laws, namely, the Water Act, Air Act and the Environment (Protection) Act, 1986. These Acts and Rules framed and Notification issued thereunder contained provisions which prohibit and/or regulate certain activities with a view to protect and preserve the environment. When a law is enacted containing some provisions which prohibit certain types of activities, then, it is of utmost importance that such legal provisions are effectively enforced. If a law is enacted but is not being voluntarily obeyed, then, it has to be enforced. Otherwise, infringement of law, which is actively or passively condoned for personal gain, will be encouraged which will, in turn, lead to a lawless society. Violation of anti-pollution laws not only

degrades quality of life but the non-enforcement of the legal provisions often results in ecological imbalance and degradation of environment, the adverse effect of which will have to be borne by the future generations."

14. Mr. Kapur has further submitted that despite the specific request having been made by the petitioners in their representation to grant personal hearing, the respondent no.1 has rejected the representation of the petitioners without according an opportunity of being heard. He has further submitted that while rejecting the petitioners' representation, the respondent no.1 has not given any reasons whatsoever. He has, therefore, submitted that the impugned communication dated 21st October, 2004 is in violation of the principles of natural justice. In support of this contention, he has relied on the decision of the Hon'ble Supreme Court in the case of MANGILAL vs. STATE OF MADHYA PRADESH reported in JT 2004 (1) SC Page 81 wherein, in para 9, it is stated that "Even if a statute is silent and there are no positive words in the Act or Rules made thereunder, there could be nothing wrong in spelling out the need to hear the parties whose rights and interest are likely to be affected, by the orders that may be passed, and making it a requirement to follow a fair procedure before taking a decision, unless the statute provides otherwise. The principles of natural justice must be read into unoccupied interstices of the statute, unless there is clear mandate to the contrary. No form or procedure should ever be permitted to exclude the presentation of a litigant's defence or stand. Even in the absence of a provision in procedural laws, powers inheres in every tribunal/court of a judicial or quasi-judicial character, to adopt modalities necessary to achieve requirements of natural justice and fair play to ensure better and proper discharge of their duties. Mr. Kapur has further relied on the decision of the Hon'ble Supreme Court in the case of STATE OF MAHARASHTRA AND OTHERS vs. JALGAON MUNICIPAL COUNCIL AND OTHERS reported in (2003) 9 SCC 731 wherein, in para 30, it is stated that "It is a fundamental principle of fair hearing incorporated in the doctrine of natural justice and as a rule of universal obligation that all administrative acts or decisions affecting rights of individuals must comply with the principles of natural justice and the person or persons affected adversely, must be afforded not only an opportunity of hearing but a fair opportunity of hearing. The State must act fairly, just the same as anyone else legitimately expected to do and where the State action fails to satisfy the test, it is liable to be struck down by the courts in exercise of their judicial review

jurisdiction."

15. On the basis of the aforesaid submissions and authorities relied upon, Mr. Kapur has strongly urged that the reliefs prayed for in this petition are required to be granted and the petitions be allowed accordingly.

16. Mr. A.K. Clerk, the learned advocate appearing as an intervener as well as for the petitioner in Special Civil Application No.14813 of 2004 has, more or less, adopted the arguments of Mr. Kapur. In addition to that, Mr. Clerk has submitted that the Respondent No.5 has submitted two EIA Reports i.e. January Report and May Report. There are lot of deviations in these two Reports. No public hearing was given in respect of May Report and clearance for Blast Furnace was based on May Report. He has, therefore, submitted that the order dated 21st October, 2004 is illegal, without jurisdiction and, therefore, deserves to be vitiated.

17. Mr. Amit Panchal, the learned advocate appearing as an intervener as well as for the petitioner in Special Civil Application No.14819 of 2004 has filed brief submissions in writing which are almost on the line of arguments made by Mr. Kapur. While objecting to the ex post facto clearance for blast furnace, Mr. Panchal has relied on the decision of the Hon'ble Supreme Court in the case of M.C. MEHTA vs. UNION OF INDIA reported in 2004 AIR SCW 4033, wherein, with regard to renewal of mining lease after EIA Notification dated 27th January, 1994, the Hon'ble Supreme Court had held that "no mining operation can commence without obtaining environmental impact assessment report in terms of the notification." He has further submitted that there is no procedure prescribed in the Act/Rules/Notification which permits grant of ex post facto clearance for the Blast Furnace. It has been wrongly done without and/or in excess of jurisdiction and is void. He has, therefore, submitted that the Respondent no.5 should not be allowed to go on with the project on the basis of the impugned order dated 21st October, 2004.

18. Mr. S.B. Vakil, the learned senior advocate appearing for the Respondent no.5 has submitted that apart from the preliminary objections raised against the maintainability of the petition, the petitioners do not have any case even on merits. Mr. Vakil has submitted that Environment (Protection) Act, 1986 or Environment (Protection) Rules, 1986 do not directly or by conferring any rule making powers on the Central Government, provide for any restriction on construction of a Project without

obtaining Environmental Clearance. Section 3(1) of the Act confers upon the Central Government powers to take all such measures as is deemed necessary or expedient for the purpose of directing and improving quality of the environment and preventing, controlling and abetting environment pollution. Mere construction of a project without its operation or processes would not affect quality of environment or environment pollution. Section 3(2) of the Act mentions that such measures may include measures with respect to restriction of area in which any industrial operation or processes or class of industries or operation or processes shall not be carried out or shall be carried out subject to certain safeguards. The Central Government's powers and functions under the Act are subject to the provisions of the Act. Section 5 of the Act provides that the Central Government's power to issue directions thereunder is subject to the provisions of the Act and provides that the same would include closure, prohibition or regulation of any industry operation or processes. Section 6 of the Act confers upon the Central Government to make rules in respect, inter alia, of prohibition and restriction and location of the industry and carrying on of processes and operation in different areas. Rule 3 provides for standards for emission or discharge of environment pollutants from various operations or processes as would be specified in Schedule-I to IV. Rule 5(1) provides that the Central Government may take into consideration factors enumerated therein while prohibiting or restricting of the industry and carrying on all processes and operations in different areas.

19. Mr. Vakil has further submitted that it is for the first time, by virtue of the Notification dated 27th January, 1994, as amended from time to time, issued under Sections 3(1) and 3(2)(V) of the Act and Rule 5(3)(d) of the Rules, the Central Government directed that from the date of publication of the said Notification in the Official Gazette expansion or modernization of any activity or new project listed in Schedule-I of the Notification shall not be undertaken in any part of India unless it has been accorded environmental clearance by the Central Government. Mr. Vakil has submitted that so far as the new project is concerned, prohibition was against undertaking the project, meaning thereby, carrying on all processes and operation, but not construction of the project. Mr. Vakil has further submitted that Clause III-A of the Notification reading 'no construction work, primary or otherwise, relating to setting up of a project may be undertaken till environmental and/or site clearance is obtained", was

inserted by Notification dated 4th May, 1994 but was repealed by the Notification dated 10th April, 1997. He has, therefore, submitted that undertaking a project means carrying on processes or operation thereof and does not include construction of the project. For this purpose, Mr. Vakil relied on the copy of Notification dated 27th January, 1994 as amended till 13th June, 2002 which is produced at Annexure-12 to the affidavit-in-reply, which did not contain Clause III-A.

20. Mr. Vakil has further submitted that even if the above plea is not accepted, there is good ground of defence for urging that the Respondent no.5 was under the genuine and bonafide belief that no prior environmental clearance was required before starting construction. Mr. Vakil has further submitted that even if it is assumed that construction was carried out in breach of the terms of the notification, at the most, penal provisions may be invoked against the Respondent no.5, but, in no case, it entails civil consequences. For this purpose, Mr. Vakil has relied on the passage from Karr On the Law of fraud and mistake 1st Indian Reprint, 1997, which states that "the question whether a statute which directs disclosure, with or without prescribing a criminal penalty for non-disclosure, confers any civil rights on persons injured by non-disclosure falls (in the absence of express provision in the nature) to be determined by the same principles as the question whether the breach of any other statutory duty gives a civil remedy." The House of Lords (a) has recently laid down for this purpose the general principles that prima facie where a statute imposes a duty and prescribes no penalty for its breach (b), a civil remedy is accorded to any person injured by the breach, but if a specific criminal penalty is prescribed there is no civil remedy.

21. Mr. Vakil has further submitted that there is no generalised principle either statutory or laid down in any judicial pronouncement that wherever construction requires prior permission, the said Act would be invalid if done without permission. He has further submitted that the permission cannot cure illegality but lack of permission can certainly be cured by grant of such permission. Mr. Vakil has, therefore, submitted that the Respondent No.5 has not carried out any construction in violation of the Notification and the Respondent no.5 has not commenced carrying on any processes or operation in its project before obtaining environmental clearance certificate. The environmental clearance certificate granted by the Central Government cannot , therefore, be considered as ex post facto clearance and no prayer for

demolition of the construction can be entertained.

22. Mr. Vakil has further submitted that the Respondent no.5's project falls within the ambit of Entry No.13(a) of the Schedule-I of the Notification dated 27th January, 1994, which refers to primary metallurgical industry such as production of iron and steel, aluminium, copper, zinc, lead and furnace alloys. It does not fall in Entry No.28 thereof, which refers to "Foundries (Individual)", as alleged by the petitioners. He has further submitted that blast furnace project is covered by Entry No.13(a). Entry No.28 lists "Foundries (Individual)" and not "Foundries". Mr. Vakil has further submitted that the contention, raised by the petitioners about the 'foundry' means an establishment where metal is melted and liquid metal is poured into moulds for casting metal, i.e. ductile iron spun pipes and cast iron spun pipes sought to be manufactured by the Respondent no.5 are foundry products, which are cast by centrifugal casting process, is not correct one. He has further submitted that the Respondent no.5's project is a composite Blast Furnace and pipe Mill project and not a stand alone Foundry or Foundry (Individual). Entry No.28 mentions Foundries (Individual), i.e. stand alone individual foundries and not foundries that may be part of composite establishment. He has further submitted that the Respondent no.5's pipe manufacturing plant by itself is not foundry. Mr. Vakil placed reliance on the Circular dated 6th October, 2003 issued by the Central Government in respect of applicability of EIA Notification to Mini Steel Plants/Foundry units, which, inter alia, states that Foundry units are those which are engaged in production of castings and process which involved simple melting of scraps, dross and other secondary materials for ingots production/semi or finished steel and does not include casting into moulds, is not a foundry activity. Mr. Vakil has further submitted that in the pipe manufacturing project of Respondent no.5, castings are required to be subjected to several further processes. The Respondent no.5's project is not merely aiming at manufacturing of castings as end products but also finished products e.g. pipes. The pipe castings once formed are subjected to a number of processes e.g. grinding, cleaning, heat treatment, leashing etc. before a finished and saleable pipe is produced. He has further submitted that process of producing pipes by the Respondent no.5 in this project is by use of induction furnace primarily meant for holding the already molten metal, which is made available from Blast Furnace at a required temperature. No coke is used in the process and as such there is no emission of

pollutants. The entire plant is a closed plant where all the by-products of the main activity are routed through pipelines and utilized in other processes of the plant. The induction furnace runs on electro-magnetic induction. Whenever electric current flows through one electric meter it produced magnetic field, which allows current of a suitable weightage and frequency to be supplied to the coil of the furnace. The magnetic field so created is used for melting or heating the metal. In this process, there is no emission of pollutants.

23. Mr. Vakil has further submitted that there are in all 86 entries in Schedule-I of the Rules. All the items mentioned in these entries do not require EIA clearance. Entry No.32 of Schedule-I refers to Foundries in general, which includes cupola, Arc furnaces and induction furnaces. It merely prescribes the standard and emission. In Schedule-I of the Notification dated 27th January, 1994, there are 30 entries only and clearance is required only in respect of those items which are mentioned therein. Foundries (Individual) covered by Entry No.28 of Schedule-I of the Notification are not same as Foundries covered by Entry No.32 of Schedule-I of the Rules, as otherwise, there is no need to separately mention Arc furnace in Entry No.13(b) of Schedule-I of the Notification. Mr. Vakil has further submitted that it is not possible to ignore the word "individual" or assign any other meaning to it as attempted by Mr. Kapur. The statute cannot be interpreted on assumption that words are used casually. Just and proper meaning should be given to every word used in any Act, Rule or Notification. For applicability of Notification, what is material is Foundries (Individual) and not foundries. There is no base of raising the contention that every induction furnace is a foundry. One of the functions of induction furnace is to hold molten metal and if such an induction furnace is used in an integrated pipe manufacturing project, it cannot be termed as Foundries (Individual) which requires any EIA clearance. Mr. Vakil has, therefore, submitted that after obtaining clearance for Blast Furnace Project, no further clearance for pipe manufacturing project is required. Since validity of EIA Notification dated 27th January, 1994 is not challenged by the petitioners, it is not open for the petitioners to raise all these contentions treating the project of Respondent no.5 as "Foundries".

24. With regard to petitioners' contention that the rejection of their representation is in violation of principles of natural justice as no opportunity of

personal hearing is given and it does not contain any reason, Mr. Vakil has submitted that applicability of principles of natural justice depends upon facts of each case and there is no straight-jacket formula. Right with reference to public hearing is already given which was not availed of by the petitioners. The only right given under the order dated 9th September, 2004 of this court was right to make representation and that right was also based on consensus. Formula was evolved with the concurrence of the parties. It did not germane from the order of this court. Mr. Vakil has, therefore, submitted that the petitioners cannot ask for personal hearing as a matter of right. In support of his submissions, Mr. Vakil has relied on the decisions of the Hon'ble Supreme Court in the case of M/s. SHRIKRISHNADAS TIKARA vs. STATE OF M.P. AND OTHERS reported in AIR 1977 Supreme Court 1691, wherein it is held that "the fact that in the second notice by the Collector a personal hearing was offered, does not mean that the failure personally to hear the petitioner was a contravention of the canon of natural justice in the first case. It is well-established that the principles of natural justice cannot be petrified or fitted into rigid moulds. They are flexible and turn on the facts and circumstances of each case." Mr. Vakil has further relied on the decision of the Hon'ble Supreme Court in the case of POSTGRADUATE INSTITUTE OF MEDICAL EDUCATION AND RESEARCH AND ANOTHER vs. A.P. WASAN AND OTHERS reported in (2003) 5 SCC 321, wherein "the grievance of Respondent No.1 (employee) in his writ petition before the High Court was against the appellant Institute and its alleged policy of promotion of Technologist Grade II sectionwise instead of cadrewise. It was for the appellant Institute to have justified its action. Justification would serve to protect the interests of other employees if it were legally sustainable. If it is not legally sustainable, it must be negated and not hearing employees who may be affected as a result of rejection of the justification, would not vitiate such negation."

25. As far as reasons are concerned, Mr. Vakil has submitted that from the internal notings produced by the petitioners without disclosing the source, it is obvious that reasons are recorded on the file. Order of this court talks about the communication of decision and not the reasons on which decision was based. He has, therefore, submitted that there is no violation of the principles of natural justice.

26. Based on the aforesaid submissions and

authorities relied upon, Mr. Vakil has forcefully submitted that the petitions deserve to be dismissed not only on preliminary objections but even on merits of the matter.

27. Mr. S.N. Shelat, the learned Advocate General appearing for the State of Gujarat as well as GPCB has submitted that the impugned order dated 21st October, 2004 granting EIA clearance to the Blast Furnace Project of Respondent no.5 for manufacturing of pipes is a balanced order wherein enough safeguards were taken by the Central Government. Kutch being a backward area, enormous development is required but at the same time, protection of environment is also equally important. The Central Government has taken into consideration all these aspects and passed the impugned order. Mr. Shelat has relied on the decision of the Hon'ble Supreme Court in the case of CONSUMER EDUCATION AND RESEARCH SOCIETY vs. UNION OF INDIA AND OTHERS reported in AIR 2000 Supreme Court 975 wherein it is held that "if an attempt is made by the State Legislature and the State Government to balance the need of the environment and the need of economic development it would not be proper to apply the principles of Prohibition in such a case. The reports of the three committees only point out the ecological importance of the area and express an apprehension, that any major mining operation within the notified area and large scale industrialisation near about the sanctuary as originally notified, may adversely affect the ecological balance and bio-diversity of that area. It would, therefore, be proper and safer to apply the 'Principle of Protection' and the 'Principle of Polluter Pays' keeping in mind the principle of 'sustainable development' and the 'principle of Inter-generation equity'."

28. Mr. Shelat has further submitted that the Respondent no.5's project is not covered by Entry No.28, i.e. Foundries (Individual). He has further submitted that all foundry activities are not prohibited under the Notification. An induction furnace is used in holding of melting metals and such an induction furnace in an integrated plant is not Foundries (Individual). Mr. Shelat has relied on the extract from the Chapter 11.18 on Melting Practice and Furnaces from Serope Kalpakjian's Book, Manufacturing Engineering and Technology. The melting furnaces commonly used in foundries are electric-arc, induction, crucible and cupolas. Induction furnaces are especially useful in smaller foundries and produce composition controlled smaller melts. There are two basic types. The coreless induction furnace consists of a crucible completely surrounded with a water-cooled

copper coil through which high frequency current passes. Because there is a strong electromagnetic stirring action during induction heating, this type of furnace has excellent mixing characteristics for alloying and adding new charge of metal. The other type is called a core or channel furnace which uses low frequency (as low as 60 Hz) and has a coil that surrounds only a small portion of the unit. It is commonly used in non-ferrous foundries and is particularly suitable for superheating (heating above normal casting temperature to improve fluidity), holding (keeping the molten metal at a constant temperature for a period of time, thus making it suitable for die-casting applications), and duplexing (using two furnaces, such as melting the metal in one furnace and transferring to another). Mr. Shelat has, therefore, submitted that such an induction furnace cannot be termed as Foundries (Individual) requiring EIA clearance.

29. Mr. Shelat has further submitted that the present petition as public interest litigation is not a bonafide petition. Mr. Shelat has submitted that the petitioners have referred to certain internal notings of the Respondent no.1 which culminated in the alleged ex post facto approval vide impugned order dated 21st October, 2004 and produced the said notings alongwith the petition at Annexure-T (collectively), without disclosing the source thereof. Mr. Shelat has submitted that there is no public access to these notings and yet the same are produced by the petitioners to subserve their own purposes. Mr. Shelat has relied on the decision of the Hon'ble Supreme Court in the case of PURANJIT SINGH vs. UNION TERRITORY OF CHANDIGARH AND OTHERS reported in AIR 1994 Supreme Court 2737 wherein it is held that "Although it is not known how he came in possession of the said notings, it was improper on his part to produce these notings in the Court proceedings, assuming that he had come in possession of them authorisedly. As a responsible officer he ought to know that notings in the departmental files did not create any rights in his favour. It is the orders issued by the competent authorities and received by him which alone can create rights in his favour."

30. Mr. Shelat has further relied on the decision of the Hon'ble Supreme Court in the case of ASHOK KUMAR PANDEY vs. STATE OF WEST BENGAL AND OTHERS reported in AIR 2004 Supreme Court 280, wherein the Hon'ble Supreme Court has held that "The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting

answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Whenever, such frivolous pleas are taken to explain possession, the Court should do well not only to dismiss the petitioners but also to impose exemplary costs. It would be desirable for the Courts to filter out the frivolous petitions and dismiss them with costs as afore-stated so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the Courts." Mr. Shelat, therefore, submitted that the present petitions deserve to be dismissed with exemplary costs.

31. Mr. Jitendra Malkan, the learned Senior Standing Counsel appearing for Respondent no.1 - Union of India, submitted that the petitioners have got an alternative efficacious remedy by way of filing an appeal before the National Appellate Authority. He has further submitted that though the Chairman's post is still vacant, Vice-chairman is already appointed who is competent to deal with the grievance raised by the petitioners in these petitions. Mr. Malkan has further submitted that the Respondent no.1 has considered the proposal of Respondent no.5 on merits and in accordance with the Procedure laid down in EIA Notification dated 27th January, 1994. Mr. Malkan has denied that the Ministry of Environment & Forests has granted ex post facto environmental clearance as alleged by the petitioners. Mr. Malkan has further submitted that even if any default is committed by the Respondent no.5, the State Government has already taken action against it by invoking powers u/s 19 of the Environment (Protection) Act, 1986. Mr. Malkan has further submitted that once the public hearing is over under the prescribed procedure, thee is no provision for giving further hearings to individuals either by the Expert Committee (Industry) or by the Ministry.

32. Mr. Malkan has further submitted that the petitioners have produced internal notings of the Ministry without disclosing the source thereof. These internal notings are not public documents and unless the court directs the Respondent no.1 to produce the same, the petitioners had no business to produce the same. The individual officers might have expressed their own views. However, final decision was taken after weighing pros and cons. With regard to two different EIA Reports, Mr. Malkan has submitted that as per the clarification made by the respondent no.5, during the public hearing, a suggestion was received to use alternative fuels to

furnace oil. The Respondent no.5 decided to go for cleaner fuel with low sulphur content. based on the low sulphur fuel, required amendments were made in the EIA Report and on the basis of this subsequent Report, EIA clearance was granted to the Blast Furnace Project. Mr. Malkan has further submitted that while granting environmental clearance on 21st October, 2004, the Respondent no.1 has stipulated a specific condition that the Respondent no.5 shall not take up any foundry activity relating to manufacturing of ductile iron pipe fittings and ductile iron castings without prior environmental clearance. Mr. Malkan has further submitted that the objections raised by the petitioners to the grant of environmental clearance to the Respondent no.5 for establishment of mini blast furnace, were not found justified in the light of the provisions of the EIA Notification dated 27th January, 1994 and its subsequent amendments. However, those environmental concerns which after due consideration were found valid, were accounted for by stipulating conditions/safeguards in the environmental clearance letter dated 21st October, 2004.

33. Mr. Malkan has further submitted that the Respondent No.5 has disposed off the representations of the petitioners after duly considering each point raised in the representations and in accordance with law. It was, therefore, not considered necessary for further oral hearing in the matter. Mr. Malkan has further submitted that induction furnace is not a foundry. Induction furnace is simply a melting unit. As per the Environment (Protection) Act, 1986, the standards for emission or discharge of environmental pollutants specified for the foundries indicate the particulate matter limits from the induction furnace which is used as a melting unit in the foundry. Mr. Malkan has further submitted that with regard to manufacturing of DI and CI pipes by centrifugal spinning process, the Respondent no.1 has obtained opinion of an expert from National Metallurgical Laboratory that a unit with induction furnace with centrifugal cast pipes cannot be taken as foundry unit, since there is no moulding line in the centrifugal cast. Mr. Malkan has further submitted that as per the expert opinion from NML, NOC granted by GPCB on 5th January, 2004 for the items i.e. ductile iron fittings and ductile iron castings have to be made in foundries only. Thus, while according environmental clearance to Respondent no.5 for Blast Furnace, the above aspect has been taken care of by stipulating a specific condition that the said two items will not be manufactured by the Respondent no.5 without obtaining environmental clearance. Mr. Malkan has further submitted that the

GPCB has been advised by the Respondent no.1 vide its letter dated 21st October, 2004, not to "grant consent to operate" for manufacturing of DI pipe fittings and DI castings without prior environmental clearance.

34. In view of the above submissions and in view of the affidavit-in-reply filed by the Respondent no.1, Mr. Malkan has submitted that none of these petitioners deserve for any relief and the petitions be summarily dismissed with cost.

35. We have heard at great length, the learned Advocates appearing for the respective parties and we have also dispassionately considered their submissions made in their pleadings as well as at the time of hearing of these petitions. Various documents, Reports, Statements, expert opinions, extracts from the Books having relevance with the subject matter of the petitions, as well as authorities cited before us were taken into consideration. Having regard to the facts and circumstances of the case, and looking to the issues involved in these petitions, we do not think it fit and proper to deal with all the contentions raised before us and give our finding thereon. In our opinion, the scope of controversy is narrow which has been widened because of pleadings and arguments made on behalf of the respective parties.

36. As far as preliminary objections raised against the maintainability of the petitions are concerned, we could have thrown out the first petition, being Special Civil Application No.14460 of 2004 but for the other two petitions on the same subject matter. Normally, multiple petitions under Public Interest Litigation, on the same subject matter are not entertained. However, the first petition does not seem to have been filed bonafide or for real and genuine public cause and it does not inspire our confidence to treat it as Public Interest Litigation in real sense. The resolution dated 15th July, 2004 was produced at the belated stage. The relationship between some of the office-bearers and members of the Board of Trustees with the personnel of Electro Steel Castings Limited is difficult to be overlooked. It, therefore, leads us to believe that the first petition is a sponsored petition. In ASHOK KUMAR PANDEY vs. STATE OF WEST BENGAL AND OTHERS (supra), the Hon'ble Supreme Court, in no uncertain terms, has observed that "when there is material to show that a petition styled as a public interest litigation is nothing but a camouflage to foster personal disputes, said petition is to be thrown out." Since there is business rivalry between the said

ESCL and the Respondent No.5 and since the said ESCL is in the habit of sponsoring such petitions, we do not concur with the view of the present petitioners that there is a real and genuine public interest involved in the litigation. It is difficult to believe that they have approached this court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration, as observed by the Hon'ble Supreme Court in that case.

37. There is one more reason to arrive at this conclusion. The petitioners in the first petition have produced certain official notings from the Government files alongwith the petition, without disclosing their source of possession. The petitioners are not supposed to have any access to these official notings as they are not public documents. Despite the petitioners being in possession of these official notings, they have prayed for in the petition that appropriate writ, order or direction be issued for the production of all relevant records pertaining to the impugned order. On our direction to the Respondent No.1, the learned senior Standing Counsel, Mr. Malkan produced the authentic copies of these official notes and while perusing and comparing these two sets of official notes, we found that certain paragraphs were omitted in the official notes produced by the petitioners, despite the fact that the same were certified to be true copies of the original. This shows that how casually and in laconic manner the official notes were produced by the petitioners. The petitioners' possession of official notes is worst than the instance quoted by the Hon'ble Supreme Court in ASHOK KUMAR PANDEY's case (supra) as no attempt was made to explain the source, and the petitioners remained totally silent about it. We, therefore, deprecate this unauthorised possession of official notes by the petitioners.

38. Coming to the merits of the matter, there is no dispute about the fact that the Respondent No.5 has applied for environmental clearance for its blast furnace project for manufacturing pipe and clearance was granted to such blast furnace project only. Before applying for this environmental clearance for blast furnace, the Respondent No.5 obtained 'no objection certificate' from GPCB on 5th January, 2004. After obtaining this NOC, construction was started by the Respondent No.5. Though this construction was in breach of Clause III-A of the Notification dated 27th January, 1994 as amended from time to time, we found force in Mr. Vakil's arguments

that because of some controversy about insertion and repealing of Clause III-A, the Respondent No.5 was under genuine and bonafide belief that for mere construction work and without starting any manufacturing process or operation, no clearance is required. Even otherwise, it was not such an illegality which could not be cured. Since the Respondent No.1 has taken conscious decision after considering all aspects and since there is no allegation of any emission or discharge of pollutants by mere construction, we are of the view that the clearance granted by the Respondent No.1 in respect of the blast furnace cannot be treated as ex post facto clearance and hence there is no question of demolition of construction made for the blast furnace project.

39. With regard to the core issue of proposed use of induction furnace for pipe manufacturing project of the Respondent No.5, we found that the Ministry of Environment & Forests has mainly relied on the opinion of three members' committee consisting of Dr. K.K. Mishra, Emeritus Scientist, National Meteorological Laboratory, Jamshedpur, Dr. Sen Gupta, Member-Secretary, Central Pollution Control Board, Delhi and Mr. Y.V. Jhala, Director, Wild Life Institute of India, Dehradun. According to Dr. Mishra's opinion, in the manufacture of spun pipe, the liquid metal is poured into revolving water cooled steel moulds and is not a typical foundry operation in strict sense. A parallel can be drawn from the ingot casting by teeming steel into cast iron ingot moulds. There is no moulding line in the centrifugal castings. A very minor core is to be put at the ends to form the socket ends. He was also of the view that the spun pipe plants are usually referred separately from the foundries as such. After giving certain examples, he expressed an opinion that a unit with induction furnace with centrifugally cast pipes cannot be taken as a foundry unit. However, Ductile Iron Castings and Ductile Iron Pipe Fittings have to be made in the foundry only. Based on this opinion, and since the Respondent No.5, vide its communication dated 8th October, 2004, made it clear that the CI/DI Fittings units are no longer part of their pipe plant project, the MOEF has taken the decision to incorporate a specific condition in the clearance letter that these two items shall not be produced and no foundry may be installed. However, this later portion, namely "no foundry may be installed" has not been incorporated in the clearance letter dated 21st October, 2004.

40. It is in this background, the issue becomes important as to whether pipe manufacturing project also

requires environmental clearance, once having obtained clearance for Blast Furnace, as the use of induction furnace cannot be ruled out, and, in that case, whether Entry No.28 of Schedule-I of EIA Notification dated 27th January, 1994 is attracted which talks of Foundries (Individual). The word 'individual' has to be given its own meaning. It cannot be interpreted by saying that each and every foundry, whether independent or stand alone or used in one composite integrated project, requires environmental clearance under Entry No.28. This controversy could have been avoided by clarifying the issue with Expert Committee (Industry) or by incorporating the condition that no foundry may be installed, as it was stated in the notings of the MOEF, on the basis of which the order was issued.

40.1 Undisputedly, the Respondent No.5 had applied for environmental clearance from the Central Government only in respect of the project of Blast Furnace. This is abundantly clear from their application, a copy of which is on record. Therefore, the procedure contemplated for the grant of clearance under the notification dated 27th January, 1994 was followed only in respect of the Blast Furnace covered under item 13 of the Schedule to the said notification, and not in respect of any other item falling in that Schedule including item 28 of 'Foundries (Individual)". Even the public hearing was obviously in respect of the Blast Furnace for which the application was made. The clearance of the project of Blast Furnace under the impugned order cannot, therefore, be treated as a clearance granted for any project other than of the Blast Furnace. Such clearance in respect of the Blast Furnace does not amount to clearance of any foundry work that may be involved in the manufacture of ductile iron spun pipes and ductile iron cast pipes by use of induction furnace.

41. It is settled position in law that judicial review of decision-making process and not the decision, is permissible. We cannot sit in appeal over the decision of competent authorities. While taking decision of granting clearance to Blast Furnace, the Respondent No.1 has incorporated several conditions and safeguards and subject to them, the clearance was ordered to be operated. In condition No.(vii) of Specific Conditions, it is made clear that the company shall not take up any foundry activity relating to manufacturing of Ductile Iron Pipe Fittings and Ductile Iron Casting as mentioned at Items No.3 and 4 of NOC granted by the GPCB vide their letter dated 5th January, 2004 without prior environmental clearance. This is an indicative of the

fact that MOEF believed that foundry work was not to be done by virtue of exclusion of these two items 3 and 4. However, the induction furnace which is one of the types of foundries under Rule 32 of the said Rules was to be used under the project for manufacture of all the four items i.e. D.I. Spun Pipes, D.I. Cast Pipes, D.I. Fittings and D.I. Castings. There is therefore, no logic or rational basis in not incorporating the items of Ductile Iron Spun Pipes and Cast Iron Pipes in condition No. (vii) when the same process of foundry activity is involved and same standard of emission or discharge of environmental pollutants is involved. The Ministry shall seek the necessary clarification from the Expert Committee (Industry) and the GPCB shall not grant consent to operate for Ductile Iron Pipe Fittings and Ductile Iron Casting without prior environmental clearance and for Ductile Iron Spun Pipes and Ductile Iron Cast Pipes without such clarification from the Expert Committee (Industry). The clearance letter makes it clear in condition No.(xvi) that the Ministry has appraised the proposal without prejudice to the action initiated by the GPCB under Section 19 of the Environment (Protection) Act, 1986 for commencing construction activity of Mini Blast Furnace without prior environmental clearance. Moreover, condition No.(ii) of General Conditions says that no further expansion or modification in the plant should be carried out without prior approval of the Ministry of Environment and Forests. The clearance letter has also made it clear that the Ministry may revoke or suspend the clearance, if implementation of any of the above conditions is not satisfactory.

42. From incorporation of the various conditions as a whole and above conditions in special, in the clearance letter, we are of the view that adequate precautions and restrictions were provided and proper procedure has been followed while granting environmental clearance to the Blast Furnace Project and the petitioners' representations were also duly considered prior to taking above decision in the matter. Due to all these conditions and safeguards provided in the clearance letter, we accept the submissions of Mr. Shelat that the impugned order is a balanced one taking care of the need of environment and the need of economic development. Kutch District, being underdeveloped and earthquake affected area, the need for economic and industrial development is of prime importance and without causing any damage to the environmental atmosphere of the area, and if principle of prohibition may not be applied with full force or vigour, the principle of sustainable development and the principle of inter-generation equity

would be observed. While taking this view, we are fortified by the decision of the Hon'ble Supreme Court in the case of CONSUMER EDUCATION AND RESEARCH SOCIETY vs. UNION OF INDIA (supra).

43. It is further to be noted that Dr. Y.V. Jhala, Director of Wild Life Institute of India, has opined, keeping in mind the ecology of the area, that the site location is over 15 km distance from any protected area. The area is within the range of several endangered species and some endemic species. However, none of these species are restricted to this region of Mundra, Kutch. The Project located in area earmarked for development is not likely to be detrimental to the populations of these species. Over and above this, the Respondent No.1 has also found that seismicity aspect of the project has been looked into by the Expert Committee (Industry). MECON has given a certificate that civil and structural design work has been carried out as per IS:1893-2002 and that the blast furnace will withstand the earthquake. The Respondent No.5 has submitted Disaster Management Plan in the contingency of the earthquake in the region. Therefore, the Respondent No.1 was of the view that there was no need to appoint NEERI or any other agency to examine the seismicity aspect.

44. With this, the only issue which remains to be dealt with is the violation of principles of natural justice. The only right which flows from the order of this court dated 9th September, 2004 is to make representation. Personal hearing was not contemplated. This aspect was also considered by De Smith, Woolf & Jowell in JUDICIAL REVIEW OF ADMINISTRATIVE ACTION, and it was observed therein that "A fair "hearing" does not necessarily mean that there must be an opportunity to be heard orally. In some situations it is sufficient if written representations are considered. Where the words "hearing" or "opportunity to be heard" are used in legislation, they usually require a hearing at which oral submissions and evidence can be tendered. However, in a great many statutory contexts, a duty of "consultation" is placed upon the decision-maker. This is almost always interpreted by the courts to require merely an opportunity to make written representations, or comments upon announced proposals." On the basis of official notings produced by the Respondent No.1 and the impugned order, it becomes foregone conclusion that the petitioners' representations were duly considered and reading together the official notings and the impugned order, it cannot be said that no reasons were recorded. The petitioners' right was to ask for decision and not

the reasons on which the decision was based. With regard to filing of two EIA Reports and decision was based on the second Report for which no public hearing was given, we are in agreement with the submissions made by the learned counsels appearing for the Respondents No.1, 3 and 5 and we do not find any infirmity which calls for any interference.

45. Subject to the observations, directions and clarifications contained hereinabove, all the three petitions are dismissed. Notices are discharged without any order as to costs.

(R.K. Abichandani, J.)

(K.A. Puj, J.)

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